

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2002-006143

05/15/2003

HONORABLE BRIAN R. HAUSER

CLERK OF THE COURT
E. Morgenstern
Deputy

FILED: 05/20/2003

STATE OF ARIZONA

MARIA Y ARMIJO
JEANNETTE GALLAGHER

v.

TONATIHU AGUILAR

ROBERT L STORRS
BRUCE E BLUMBERG

VICTIM SERVICES DIV-CA-CCC

AGGRAVATION PHASE - TRIAL MINUTE ENTRY
DAY 1

State's Attorney:	above-named counsel
Defendant's Attorney:	above-named counsel
Defendant:	Not Present
Court Reporter:	Melody O'Donnell

Prior to trial, State's Exhibit Nos. 1 through 3 are marked for identification.

10:05 a.m. IN CHAMBERS: Counsel are present.

The court has been advised that defendant has again voluntarily waived his presence for today's proceedings.

Court and counsel confer.

Officer Larry Erby and Eric Archer, of the Special Response Team (SRT) address the court with respect to defendant's decision.

Defense counsel advise the court that defendant is under the impression that he will no longer be allowed to dress out for court.

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The court assures defense counsel that this is erroneous information, and defendant is advised (through the SRT officers by radio) that he will be allowed to dress out.

The court is advised (by radio) from jail personnel that defendant now claims to be ill and does not wish to be brought up for trial.

As the court ruled earlier, any voluntary failures to appear by defendant during these proceedings will be deemed he has voluntarily waived his right to appear.

Accordingly,

The trial will proceed without defendant.

Legal issues are addressed.

Defendant's Motion in Limine with respect to the use of a Special Verdict prepared by Judge Michael Wilkinson in another case as an exhibit for this trial is argued.

IT IS ORDERED denying the motion for the aggravation phase of this trial.

IT IS FURTHER ORDERED taking the motion under advisement with respect to the mitigation phase.

10:18 a.m. Matter concludes.

10:21 a.m. Court reconvenes with respective counsel present.

Court reporter, Melody O'Donnell, is present.

This is the time set for the penalty portion of trial in this case. The jury is all present, including the two alternate jurors previously dismissed during the initial phase of this trial.

Preliminary instructions pertaining to the aggravation phase of this trial are read to the jury.

FILED: Preliminary instructions

Opening statement is presented.

State's case.

Detective Ron Jones is sworn and testifies.

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State's Exhibit No. 1 is admitted into evidence.

State's Exhibit No. 105 (marked for trial phase) is admitted into evidence.

Witness is excused.

Bernard Phillip Lopez is sworn and testifies.

Witness is excused, subject to recall.

Dr. Philip Keen is called out of order and is sworn and testifies.

Witness is excused.

11:54 a.m. Jury is excused.

Defendant moves for mistrial based on questions asked by the state of witness Lopez.

Argument is presented.

For the reasons set forth on the record,

IT IS ORDERED denying defendant's motion for mistrial.

IT IS ORDERED taking under advisement whether a cautionary instruction should be given to the jury with respect to the mention of the word "escape" during testimony.

12:01 p.m. Court stands at recess.

1:33 p.m. Court reconvenes with respective counsel present. The jury is all present.

Court reporter, Melody O'Donnell, is present.

The court gives the jurors a cautionary instruction with respect to the legal issue that arose concerning the use of the word "escape" during this morning's testimony.

David Nguyen is sworn and testifies.

Witness is excused.

State rests.

1:43 p.m. Jury is excused from the courtroom.

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Defendant moves for directed verdict on two aggravating factors presented by the state.

Motion is argued.

For the reasons set forth on the record,

IT IS ORDERED granting defendant's motion for directed verdict on the aggravating circumstance of "knowingly creating a grave risk of death to another person in addition to the person murdered during the commission of the offense".

2:18 p.m. Court stands at recess.

2:32 p.m. Court reconvenes with respective counsel present.

Court reporter, Melody O'Donnell, is present.

During the recess, the court had an opportunity to review case law and accordingly,

IT IS FURTHER ORDERED granting defendant's motion for directed verdict on the aggravating circumstance of "the offense was committed in an especially cruel manner".

Forms of verdict and scheduling issues are addressed.

2:25 p.m. Court stands at recess.

3:08 p.m. Court reconvenes with respective counsel and defendant present. The jury is all present.

Court reporter, Melody O'Donnell, is present.

Defendant rests.

Final instructions are read to the jury.

Closing argument is presented.

3:24 p.m. The jury retires to deliberate their verdicts in this phase of the trial.

3:53 p.m. Court reconvenes with respective counsel present.

Court reporter, Melody O'Donnell, is present.

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The jury is all present in the jury box and through their foreperson return into court their verdicts which are read and recorded by the clerk and read as follows:

“We the Jury, duly empanelled and sworn, in the above entitled action, upon our oaths, unanimously find the State has proved beyond a reasonable doubt the aggravating factor that the defendant was previously convicted of the serious offense of Second Degree Murder.

Juror No. 14
Foreperson”.

“We the Jury, duly empanelled and sworn, in the above entitled action, upon our oaths, unanimously find the State has proved beyond a reasonable doubt the aggravating factor that the defendant was previously convicted of the serious offense of Burglary in the First Degree.

Juror No. 14
Foreperson”.

“We the Jury, duly empanelled and sworn, in the above entitled action, upon our oaths, unanimously find the State has proved beyond a reasonable doubt the aggravating factor that the defendant has previously been convicted of another offense for which a sentence of life imprisonment or death was possible.

Juror No. 14
Foreperson”.

“We the Jury, duly empanelled and sworn, in the above entitled action, upon our oaths, unanimously find the State has proved beyond a reasonable doubt the aggravating factor that the defendant committed the offense while in the custody of or on authorized or unauthorized release from the state department of corrections, a law enforcement agency or a county or city jail.

Juror No. 14
Foreperson”.

Each juror replies these are his/her true verdicts.

FILED: Forms of verdict

Jury is excused until Monday, May 19, 2003 at 10:30 a.m.

Scheduling issues are resolved.

4:03 p.m. Court stands at recess until 10:00 a.m., May 16, 2003.